



"To enrich lives through effective and caring service"



Santos H. Kreimann
Director

Kerry Silverstrom
Chief Deputy

ADOPTED

BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES

#35 JUNE 15, 2010

Sachi A. Hamai
SACHI A. HAMAI
EXECUTIVE OFFICER

June 15, 2010

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012

Dear Supervisors:

**APPROVAL OF AMENDMENT NO. 5 TO LEASE NO. 17567
PARCEL 131S (CAFÉ DEL REY)—MARINA DEL REY
(SUPERVISORIAL DISTRICT FOUR)
(4 VOTES)**

SUBJECT

This Board letter requests approval of a lease amendment for Parcel 131S (Café del Rey) that maintains existing percentage and minimum rental rates, adjusts the rental security deposit, and updates the insurance provisions.

IT IS RECOMMENDED THAT YOUR BOARD:

1. Find that the proposed Amendment No. 5 to Lease No. 17567 is categorically exempt under the California Environmental Quality Act pursuant to Class 1(r) of the County's Environmental Document Reporting Procedures and Guidelines.
2. Approve and authorize the Chair of the Board to sign the attached Amendment No. 5 to Lease No. 17567, maintaining existing percentage and minimum rental rates, adjusting the security deposit, and updating the insurance provisions for a ten-year period ending July 31, 2018.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

Marina del Rey ground leases generally provide for the periodic review of leasehold rents and liability insurance coverage to ensure that the rental rates payable to the County are maintained at current fair market levels and that the amount of general liability insurance is adequate to protect the County's interests. County rents are typically computed as the greater of either a fixed minimum rent

or the total of varying percentages of the lessee's gross receipts from uses of the leasehold.

The Parcel 131S lease (Café del Rey) requires adjustment of rents on August 1, 1998 and every tenth anniversary thereafter. Based on comparable rates at other Marina leaseholds, the Department of Beaches and Harbors has negotiated with the lessee to keep rates of all percentage rent categories unchanged as the current rates are at market. Additionally, there will be no change to the minimum rent, or "square foot rental", provision as there is an already existing lease provision that calls for a minimum rent adjustment every three years. The next scheduled minimum rent adjustment will be made on August 1, 2010 to an amount equaling 75% of the average annual rent payable to the County over the prior three years.

The rental security deposit provision has been revised to require the security deposit to be at an amount equal to one month's minimum rent or the square foot rental. Additionally, Amendment No. 5 incorporates changes to the indemnity clause, insurance requirements, and miscellaneous insurance provisions to conform to the Chief Executive Office's Risk Management Branch's new and more stringent requirements.

Implementation of Strategic Plan Goals

The recommended action will keep County percentage rental rates at Parcel 131S comparable to other Marina del Rey parcels and incorporates new insurance provisions in fulfillment of Strategic Plan Goal No. 1, "Operational Effectiveness", Strategy 1, "Fiscal Sustainability".

FISCAL IMPACT/FINANCING

There will be no fiscal impact from your Board's approval of Amendment No. 5.

Operating Budget Impact

There will be no operating budget impact as a result of this action.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

Commonly known as Café Del Rey, Parcel 131S is improved with a restaurant building and parking lot and occupies 38,486 square feet of land in Marina del Rey. It does not have a water area. The 60-year ground lease between the County and lessee was executed in 1970.

Amendment No. 5 has been approved as to form by County Counsel. At its meeting of April 13, 2010, the Small Craft Harbor Commission endorsed the Director's recommendation that your Board approve the Amendment.

ENVIRONMENTAL DOCUMENTATION

The proposed Amendment No. 5 is categorically exempt under the provisions of the California Environmental Quality Act pursuant to Class 1(r) of the County's Environmental Document Reporting Procedures and Guidelines.

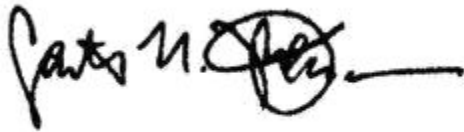
IMPACT ON CURRENT SERVICES (OR PROJECTS)

There will be no impact on current services from your Board's approval of Amendment No. 5.

CONCLUSION

Please have the Chair of the Board of Supervisors sign all three copies of Amendment No. 5 and have the Executive Officer of the Board return two executed copies, as well as a copy of the adopted Board letter, to the Department of Beaches and Harbors.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Santos H. Kreimann", followed by a horizontal line.

SANTOS H. KREIMANN
Director

SHK:KS:GJ:PW:ks

Enclosures

c: Chief Executive Officer
County Counsel
Executive Officer, Board of Supervisors

AMENDMENT NO. 5 TO LEASE NO. 17567

Parcel No. 131S--Marina del Rey

THIS AMENDMENT TO LEASE is made and entered into this 15th
day of JUNE, 2010 (the "Effective Date"),

BY AND BETWEEN

COUNTY OF LOS ANGELES,
hereinafter referred to as "County",

AND

COMMODORE CLUB INC, a
California corporation, hereinafter
referred to as "Lessee".

WITNESSETH:

WHEREAS, County and Lessee entered into Lease No. 17567 under the terms of which County leased to Lessee that certain real property located in the Marina del Rey Small Craft Harbor, County of Los Angeles, State of California, now commonly known as Parcel 131S, which leasehold premises (the "Premises") are more particularly described in Exhibit "A" attached to and incorporated in said lease, as amended (the lease and all amendments are collectively hereafter referred to as the "Lease"); and

WHEREAS, Section 15 of said Lease provides that as of August 1, 1998, and as of August 1st of every tenth (10th) year thereafter (each such date is hereafter referred to as a "Rental Adjustment Date"), the rates for square foot rental and all categories of percentage rentals, and liability insurance requirements (collectively, the "Adjusted Rentals") shall be readjusted by Lessee and County in accordance with the standards established in said Section 15; and

WHEREAS, Section 15 further provides that Adjusted Rentals may be determined by Lessee and County by mutual agreement at any time; and

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AMENDMENT
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WHEREAS, the parties hereto have reached agreement with respect to the square foot rental, percentage rental, security deposit, and amounts of liability insurance for the ten-year period commencing as of August 1, 2008 (the "2008 Rental Adjustment Date").

NOW, THEREFORE, in consideration of the mutual agreements, covenants and restrictions contained herein, the parties, and each of them, agree as follows:

1. **Security Deposit.** The first paragraph of Section 7 (Security Deposit) of said lease is hereby amended to read as follows:

"Lessee shall deliver to and maintain with County a security deposit (the "Security Deposit") in an amount equal to one month's square foot rental for the leasehold premises, as this rental may change over the term of this Lease. This sum shall be maintained by the County as a security deposit to cover delinquent rent and any other financial obligations of the Lessee under this lease, and shall be so applied at the discretion of the County."

2. **Square Foot Rental.** There shall be no modification to the square foot rental provision of Section 12 of the Lease.

3. **Percentage Rental.** There shall be no readjustment to the percentage rental rates to be paid by Lessee for the ten-year period commencing on the 2008 Rental Adjustment Date.

4. **Insurance Provisions.** Commencing as of the Effective Date, Sections 25, 26, 27, and 28 of said Lease are deleted in their entirety and the following substituted therefor:

"25. INDEMNIFICATION.

Lessee shall indemnify, defend and hold the County, its Special Districts, elected and appointed officers, employees and agents harmless from and against all liability, including, but not limited to, demands, claims, actions, fees, costs and expenses (including attorney and expert witness fees), arising from or connected with Lessee, its members, agents and invitees, operations and use of the Premises.

"26. INSURANCE REQUIREMENTS.

Without limiting Lessee's indemnification of County and during the term of this Lease, Lessee shall provide and maintain the following insurance. Such insurance shall be primary to and not contributing with any other insurance or self-insurance programs maintained by County, and such coverage shall be provided and maintained at Lessee's own expense.

"26.1.1. General Liability insurance (written on ISO policy form CG 00 01 or its equivalent) and endorsed to name County as an additional insured, with limits of not less than the following:

General Aggregate:	\$10 million
Products/Completed Operations Aggregate:	\$10 million
Personal and Advertising Injury:	\$5 million
Each Occurrence:	\$5 million

"26.1.2. Automobile Liability insurance (written on ISO form CA 00 01 or its equivalent) with a limit of liability of not less than \$1 million for each accident and providing coverage for all "owned", "hired" and "non-owned" vehicles, or coverage for "any auto". If and when valet parking services are provided at the Premises, Lessee shall provide Garagekeeper's Legal Liability coverage (written on ISO form CA 99 37 or its equivalent) with limits of not less than \$1 million for this location.

"26.1.3. Workers' Compensation and Employers' Liability insurance providing Workers' Compensation benefits, as required by the Labor Code of the State of California and for which Lessee is responsible, and including Employers' Liability coverage with limits of not less than the following:

Each Accident:	\$1 million
Disease - policy limit:	\$1 million
Disease - each employee:	\$1 million

"26.1.4. Commercial Property insurance covering damage to County's property, including improvements and betterments, from perils covered by the Causes-of-Loss Special Form (ISO for CP 10 30 or its equivalent), excluding earthquake and including Ordinance or Law Coverage, written for the full replacement value of the property, with a deductible no greater than \$250,000 or 5% of the property value, whichever is less, and also including business interruption, including loss of rent, equal to six months' rent, with proceeds payable to Lessee and County as their interests may appear and utilized for repair and restoration of the Premises and improvements.

"Upon the occurrence of any loss, the proceeds of such insurance shall be held by County in trust for the named insureds as their interests appear. In the event of such loss, Lessee shall be obligated to rebuild or replace the destroyed or damaged buildings, structures, equipment and improvements to the full satisfaction of the County. Said obligation to rebuild or replace is not dependent upon the existence of insurance. County shall reimburse Lessee for said rebuilding or replacement out of and to the full extent of the proceeds of said insurance as payments are required for said purposes. Any surplus proceeds after said rebuilding or replacement shall be distributed to the named insureds as their interests may appear.

"26.1.5. Liquor Liability Insurance: If and when the manufacture, distribution or service of alcoholic beverages occurs on the Premises, Lessee shall provide Liquor Liability insurance (written on ISO policy for CG 00 33 or 34 or their

equivalent) with a liability limit of not less than \$2 million per occurrence, and an annual aggregate of \$5 million. If written on a "claims made" form, the coverage shall also provide an extended two-year reporting commencing upon the expiration or earlier termination of Lease No. 17567, or replacement coverage shall be maintained until such time.

"26.2 Waivers of Subrogation. Lessee shall obtain appropriate endorsements upon all insurance policies, other than Workers' Compensation, waiving subrogation by the insurer(s) against County.

"26.3. Evidence of Insurance. Certificate(s) or other evidence of coverage satisfactory to County shall be delivered to County prior to the Effective Date. Such certificates or other evidence shall:

1. Specifically identify this Lease.
2. Clearly evidence all coverages required in this Lease.
3. Contain the express condition that insurer will use its best efforts to give written notice by mail to County at least 30 days in advance of cancellation for all policies evidenced on the certificate of insurance.
4. Identify any deductibles or self-insured retentions exceeding \$25,000.

"26.4. Failure to Maintain Coverage. Failure by Lessee to maintain the required insurance, or to provide evidence of insurance coverage acceptable to County, shall constitute a material breach of this Lease. Alternatively, the County may purchase such required insurance coverage, and without further notice to the Lessee, may deduct any premium costs advanced by the County for such insurance from the Lessee's security deposit.

"26.5. Notification of Incidents, Claims or Suits. Lessee shall report to County any accident or incident relating to services performed under this Lease

which involves injury or property damage, which Lessee reasonably believes has a substantial likelihood of the filing of a claim or lawsuit against the County. Such report shall be made in writing within 15 days of Lessee's knowledge of such occurrence.

"26.6. Compensation for County Costs. In the event that Lessee fails to comply with any of the indemnification or insurance requirements of this Agreement, and such failure to comply results in any costs to County, Lessee shall pay full compensation for all reasonable costs incurred by County.

"27. [INTENTIONALLY OMITTED]

"28. [INTENTIONALLY OMITTED]"

5. **Miscellaneous.** Except as herein specifically amended, all terms, conditions and provisions of the Lease shall be and continue to remain in full force and effect and are unmodified, and each of the parties hereto reaffirms and reacknowledges its respective obligations under the Lease as amended hereby.

IN WITNESS WHEREOF, County has, by order of its Board of Supervisors, caused this Amendment to Lease to be subscribed by the Chair of said Board and attested by the Executive Officer thereof, and the Lessee, by its duly authorized representative, has executed the same.

Dated: JUNE 15, 2010



COUNTY OF LOS ANGELES

By: Gloria Molina
Chair, Board of Supervisors

ATTEST:

SACHI A. HAMAI
Executive Officer-Clerk of the
Board of Supervisors

LESSEE:

COMMODORE CLUB, INC., a California
Corporation

By: Quincy Dabney

Its: President

By: Samuel Hama
Deputy

APPROVED AS TO FORM:

ANDREA SHERIDAN ORDIN
County Counsel

By: Andrea Sheridan Ordin
Deputy



I hereby certify that pursuant to
Section 25103 of the Government Code,
delivery of this document has been made.

SACHI A. HAMAI
Executive Officer
Clerk of the Board of Supervisors

By: Samuel Hama
Deputy

ADOPTED
BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES

35 JUN 15 2010

Sachi A. Hamai
SACHI A. HAMAI
EXECUTIVE OFFICER

LEGAL DESCRIPTION

Marina Del Rey
Lease Parcel No. 131S

Those portions of Parcels 663 to 666 inclusive, in the County of Los Angeles, State of California, as shown on Los Angeles County Assessor's Map No. 88, filed in Book 1, pages 53 to 70 inclusive, of Assessor's Maps, in the office of the Recorder of said County, within the following described boundaries:

Beginning at the intersection of the westerly line of the easterly 55.13 feet of said Parcel 663 with the northerly line of said last mentioned parcel; thence westerly along the northerly lines of said Parcels 663 to 666 inclusive 302.57 feet to the easterly line of the westerly 42.3 feet of said Parcel 666; thence southerly along said easterly line 136.00 feet to a line parallel with and 59 feet northerly, measured at right angles, from the southerly line of said last mentioned parcel; thence easterly along said parallel line 154.57 feet; thence northerly at right angles from said parallel line 18.00 feet to a line parallel with and 77 feet northerly, measured at right angles, from the southerly line of said Parcel 664; thence easterly along said last mentioned parallel line 148.00 feet to said westerly line; thence northerly along said westerly line 118.00 feet to the point of beginning.

DESCRIPTION APPROVED

October 22, 1970

JOHN A. LAMBIE

County Engineer

By Walter J. Fink Deputy